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# Reinventing the Development Wheel of the World Trading System (Reviewing Sonia E. Rolland, Development at the World Trade Organization (2012))

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# REINVENTING THE DEVELOPMENT WHEEL OF THE WORLD TRADING SYSTEM (REVIEWING SONIA E. ROLLAND, *DEVELOPMENT AT THE WORLD TRADE ORGANIZATION* (2012))

*Sungjoon Cho*<sup>\*</sup>

## ABSTRACT

In probing how WTO norms may affect developing countries, Sonia Rolland introduces two paradigms in this book: development as an idiosyncrasy and development as a normative co-constituent to trade. The first paradigm concerns development-related exceptions and carve-outs found within WTO rules and agreements that exemplify a contingent provision of special favors to developing countries. Overall, it represents a limited mandate on development in the WTO. In contrast, the second paradigm embodies a normative operationalization of development agenda within the WTO system. It normatively reconstructs WTO rules and institutions in a way where development is a core mandate of the WTO, on par with free trade. In her reform proposals, the author reveals a subterranean advocacy of a *shift* from the first to second paradigm. The author offers a rare in-depth account of the past, present, and future of development in the world trading system. This Review Essay complements the author's ambitious project by locating some missing pieces of this grand puzzle of trade and development, such as general trade rules and disciplines.

## I. PROLOGUE: MAINSTREAMING DEVELOPMENT

Classic trade theories based on the axiom of comparative advantage view development as a logical corollary to trade. Trade, a mutually beneficial enterprise, brings prosperity to each nation involved. East Asian countries, among others, provide powerful empirical confirmations of this. Under these classic theories, development might not even warrant an independent inquiry apart from trade: if development is a destination, trade is an auto-pilot mode for the journey. Then, why have so many scholars, in particular those of international trade *law*, struggled with the topic of development?<sup>1</sup> In her

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<sup>1</sup> See Robert E. Hudec, *Developing Countries in the GATT Legal System* (1987).

ambitious book, Sonia Rolland offers her passionate answer to the puzzling question. This encyclopedic study of legal and institutional aspects of development at the World Trade Organization (WTO) is a valuable contribution in the field. The author offers a rare in-depth account of the past, present, and future of development in the world trading system. This book is rife with sharp observations and rich insights. Not only trade scholars but also policymakers should have it on their shelves.

This review essay serves two main purposes. First, as a commentary rather than a critique, it aims to encourage the general readership of the book by helping readers digest its rich observations, arguments, and proposals. Second, it also aims to complement the author's ambitious project by locating some missing pieces of this grand puzzle of trade and development.

At the outset, the author acknowledges that WTO norms may affect developing countries through three main mechanisms: first, general trade rules and disciplines, i.e. the non-discrimination principle and trade remedy rules; second, particular exceptions to those general trade rules, such as 'special and differential treatment' (SDT) provisions; third, other procedural rules regarding decision making and dispute resolution. Only the second and third dimensions are addressed in the book, the first one remaining largely unexplored.<sup>2</sup> The book presents these two main dimensions in terms of two paradigms: development as an idiosyncrasy and development as a normative co-constituent to trade. These paradigms, according to the author, are merely employed as theoretical benchmarks by which she categorizes and analyzes the current development-related rules and institutions of the WTO.<sup>3</sup>

The first paradigm, i.e. development as an idiosyncrasy, is based on a phenomenological account of the historic treatment of development concerns in the WTO and its predecessor, the General Agreement on Tariffs and Trade (GATT). Development-related exceptions and carve-outs found within WTO rules and agreements exemplify a contingent provision of special favors to developing countries. This paradigm is idiosyncratic due mainly to its *ad hoc* nature without any overarching principles, although such characteristic also connotes political bargain and flexibility. All in all, it represents a limited mandate on development in the WTO.<sup>4</sup>

In contrast, the second paradigm, i.e. development as normative co-constituents, embodies a normative operationalization of development agenda within the WTO system. It presupposes the balance, or linkage, between free trade and development. It normatively reconstructs WTO rules and institutions in a way where development is a core mandate of the WTO, on par with free trade. Under this paradigm, development is not second-class and triggered in the WTO on a contingent basis, as is the case under the first

<sup>2</sup> Sonia E. Rolland, *Development at the World Trade Organization* (2012), at v.

<sup>3</sup> *Ibid.*, at 3–4.

<sup>4</sup> *Ibid.*, at v.

paradigm. Here development is an overarching principle that must constantly guide normative operations of the WTO.<sup>5</sup>

The author emphasizes that these paradigms are purely conceptual instruments, which are neither descriptive nor prescriptive in and of themselves. Yet, a careful reader will soon discover a subterranean advocacy of a *shift* from the first to second paradigm throughout the book.

## II. THE PAST, PRESENT, AND FUTURE OF DEVELOPMENT IN THE GATT/WTO

### A. Genealogy of development discourse (pre-GATT)

The book begins with a genealogy of development discourse. Part I demonstrates how the differing views on development between North and South in the pre-GATT era shaped development-related norms and institutions in the GATT/WTO. By way of theoretical background, this part introduces varying development theories, classical and modern, presented by such scholars as W.W. Rostow, Friedrich List, Raúl Prebisch, Arthur Lewis, H.W. Singer, Joseph Stiglitz, and Jeffrey Sachs. This is useful in understanding not only the theoretical, but also the ideological foundations of the development rules subsequently shaped in the GATT/WTO system. As legal background, Part I discusses the public international law dimension of development through the lens of human rights and the emerging right to development. By way of institutional background, this Part addresses post-colonial international organizations, i.e. the United Nations (UN) and its agencies, including the United Nations Conference on Trade and Development (UNCTAD), the Bretton Woods organizations, such as the World Bank and the International Monetary Fund (IMF), and South–South organizations, such as regional development banks and regional trade agreements among developing countries. It also discusses prototypical development programs, such as trade preferences and commodity agreements.

Overall, Part I demonstrates that the weak ethos of development in the GATT/WTO system originates from the South and North's diverging views on development. While the South (i.e. the UN), exemplifying the second paradigm, attempted to provide development with a separate strong normative status, the North (i.e. the Bretton Woods institutions) preferred a soft, *ad hoc* approach, representing the first paradigm.

### B. Evolution of development discourse in the GATT/WTO

While Part I discusses the general background of development norms and institutions that mostly took place outside of the global trading system, Part

<sup>5</sup> Cf. Frank J. Garcia, *Trade, Inequality, and Justice: Toward a Liberal Theory of Just Trade* (2003), at 107 (applying the Rawlsian egalitarianism ('difference principle') to international trade law through a normative medium such as the SDT).

II shifts its focus to the GATT/WTO. Here, the author tracks down how development norms, actors, and institutions evolved within the GATT and the subsequent WTO system. One of the most critical observations in this part is the relatively recent discernibility of trade and development debates in the global trading system after the Uruguay Round of negotiations, which the author attributes to developing countries' mounting leverage in the WTO.<sup>6</sup>

According to the author, the aborted International Trade Organization (ITO) was a missed opportunity for promoting development within the world trading system. The original ambition of the ITO, which would have established a 'collective economic system', encompassed strong government protection of infant industries and commodity agreements.<sup>7</sup> Given this birth defect, development deficiencies had continued under the GATT, characterized by chronic barriers put up by developed countries against developing countries' main exports, such as agricultural and other labor-intensive products. It was only with an exogenous jolt from the UNCTAD that the GATT managed to incorporate Part IV of the GATT under the banner of 'Trade and Development'. Subsequently, the GATT Contracting Parties also introduced a legal ground for tariff preferences, i.e. the Generalized System of Preferences (GSP).

The true development momentum emerged only after the end of the Uruguay Round. The Uruguay Round was a grand bargain between the North and the South. In return for the introduction of new areas of regulation, such as trade in services (the General Agreement on Trade in Services) and trade-related intellectual property rights (the Agreement on Trade-Related Intellectual Property Rights), WTO members addressed, at least formally, some chronic development deficiencies in such areas as agriculture (the Agreement on Agriculture) and textiles (the Agreement on Textiles and Clothing).

In general, developing countries participated in post-Uruguay Round trade talks more vigorously than in the GATT era. This trend continued through the Singapore Ministerial Meeting (1996), the Seattle Ministerial Meeting (1999), and finally the launch of the current *development* round in Doha, Qatar (2001). As the participation of developing countries increased, so did their agenda-shaping power. In this regard, the author laments that the recent Doha doldrums have eroded this long-lasting development momentum.<sup>8</sup>

### C. The status quo

Against the historical backdrop discussed in Part I and II, Part III addresses the current normative configuration of development in the WTO system.

<sup>6</sup> Rolland, above n 2, at 59.

<sup>7</sup> *Ibid*, at 65.

<sup>8</sup> *Ibid*, at 104.

This Part first spells out substantive development provisions, such as SDT clauses, scattered across WTO agreements, as well as other institutional issues regarding decision-making processes.

First, the garden-variety SDT provisions feature multiple functions. According to the WTO Committee on Trade and Development, their primary objectives include the expansion of market access by developing countries, safeguards of developing countries' interests, flexibility of commitments, technical assistance, and unique provisions for least-developed countries (LDCs). While SDT provisions in general remain vague and hortatory, the author reinterprets them to 'operationalize' their purpose in dispute resolution. For example, referring to certain non-WTO legal sources including both non-WTO treaties and domestic jurisprudence, the author suggests that best efforts provisions be interpreted as imposing on developed countries a due diligence obligation to take into account developing countries' interests.<sup>9</sup> The author goes so far as to argue that certain SDT provisions on reporting/notification can be read as a 'mandate for "secondary legislation" by the WTO or implementation for individual members'.<sup>10</sup>

The author's progressive hermeneutical position naturally leads to criticism of conventional GATT/WTO jurisprudence in operationalizing SDT provisions. For example, in interpreting Part IV of the GATT, the 1980 GATT panel in *EC – Sugar Exports (Brazil)* ruled that by increasing sugar exports through the use of subsidies the EC failed to collaborate jointly with developing countries to realize the principles and objectives under Articles XXXVI and XXXVIII. This ruling, according to the author, was 'cursory at best, giving little guidance on the exact scope of the legal obligations under Part IV'.<sup>11</sup> Interestingly, the author attributes the inoperability of SDT provisions to the inactivity on the part of developing countries. She argues that 'had developing country litigants been more assertive in their Part IV claims, or had they better honed their arguments, it is possible that a more robust jurisprudence could have emerged'.<sup>12</sup>

Subsequently, the author probes into a number of institutional procedures in the WTO that affect developing countries. These procedures include various dimensions of collective decision making among WTO members, including voting procedures, negotiation formats, the thorny issue of single undertaking, and secondary legislation, such as internal decisions by committees and councils. Here, the author makes a critical observation: seeing is deceiving. In other words, although the current institutional status quo appears to be based on a formal, legal equality among WTO members, its

<sup>9</sup> Ibid, at 122.

<sup>10</sup> Ibid, at 130.

<sup>11</sup> Ibid, at 147.

<sup>12</sup> Ibid, at 152.

practical impact may be to disfranchise some developing members.<sup>13</sup> According to the author, this disparity between the law on the books and law in action is a normative flaw to the extent that it represents the paucity of WTO discourse on the normative implications of the trade and development relationship.

#### D. Reform agenda

Against the backdrop of criticisms on the status quo in Part III, Part IV of the book advances a rich menu of reform options involving, *inter alia*, SDT and the dispute settlement mechanism. For example, some developing countries have advocated the idea of ‘multilateral SDT’, which calls for certain benchmarks that would automatically trigger access to SDT.<sup>14</sup> These benchmarks may include a list of qualifying countries or a set of economic indicators. Granted, these qualifying criteria may be controversial. Nonetheless, in some well-defined issue areas, such as LDCs, these might be effective. For example, one might recall that the WTO waiver of Article 31 of the TRIPS Agreement<sup>15</sup> was specifically designed for LDCs. In the same vein, WTO members also agreed to accord the duty-free, quota-free market access to LDCs in the Hong Kong Ministerial Meeting.

A bolder reform proposal focuses on the dispute settlement system, in particular the WTO tribunal’s approach to treaty interpretation. In a conscious effort to mainstream development within the WTO context, the author argues that the WTO tribunal should embrace development-oriented ‘overarching interpretive principles’.<sup>16</sup> According to the author, these principles may include the ‘development-fostering versus development-stifling’ test or the ‘least development-restrictive’ test.<sup>17</sup>

### III. UNEARTHING A HIDDEN AGENDA: MAINSTREAMING *TRADE*

#### A. Trade and development versus development in trade

This book provides an inclusive account of development as it relates to the GATT/WTO system. Its rich stocktaking and insightful proposals will undoubtedly make considerable contributions to future discussion and negotiation in the field. However, the book does leave behind one blind spot—general trade rules and disciplines as they are related to development. Spotlighting the blind spot will greatly complement the author’s observations and proposals.

<sup>13</sup> *Ibid.*, at 240.

<sup>14</sup> *Ibid.*, at 292.

<sup>15</sup> Decision of the General Council of 30 August 2003, Implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and public health, WT/L/540 and Corr.1 (1 September 2003).

<sup>16</sup> Rolland, above n 2, at 308.

<sup>17</sup> *Ibid.*

The main thesis of the book is a call for rebalancing between trade and development norms, i.e. mainstreaming development. Here, development norms are overarching principles that are conceptually distinguishable from trade norms. For example, SDT provisions are exogenous additions to the WTO in the sense that they do not originate from general trade rules and disciplines. SDT provisions are not a codification of the GATT *acquis* and lie outside of the GATT/WTO jurisprudential evolution. Rather, they are incorporated via political bargaining, which characterizes their inherently elusive properties. Yet, these properties tend to precipitate a dilemma.

On the one hand, if SDT provisions are of a trade-restricting nature, such as derogations and waivers, their full operationalization, either by multilateralization through certain qualifying benchmarks<sup>18</sup> or by unilateralization through reservations,<sup>19</sup> are prone to the so-called 'Faustian bargain'. Sidney Weintraub critically observed that developing countries' bargaining usually limited access to foreign markets for waivers from GATT rules and disciplines.<sup>20</sup> In other words, developing countries often receive SDT in return for the exclusion of their most competitive export products from trade preferences. Damage to developing countries from such exclusions might have outweighed any potential benefits from SDT,<sup>21</sup> which might result in a 'reverse' SDT.<sup>22</sup> On the other hand, trade-enhancing SDT provisions, such as best efforts clauses, may be better situated for a synergistic achievement of both trade and development than trade-restricting SDT provisions.

The author espouses a 'development-fostering measure' test in an effort to mainstream development by employing overarching interpretive principles.<sup>23</sup> Such a test would require developed country WTO members to consider the least development-restrictive measures in compliance with general WTO disciplines. However, this progressive interpretation may be seen as undue judicial activism and thus may invite political backlash. One should be mindful of the fact that SDTs are vague since that is exactly what their framers desired. We have little GATT/WTO jurisprudence in this area not because

<sup>18</sup> Ibid, at 292–94.

<sup>19</sup> Ibid, at 294–97.

<sup>20</sup> Michael J. Trebilcock and Robert Howse, *The Regulation of International Trade* (2d ed. 1999), at 368.

<sup>21</sup> These alleged benefits from exemptions, such as infant industry protection, remain controversial. Bernard M. Hoekman and Michel M. Kostecki, *The Political Economy of the World Trading System: The WTO and Beyond* (2d ed. 2001), at 408.

<sup>22</sup> Ablasse Ouedraogo, Seminar on Special and Differential Treatment for Developing Countries, Closing Remarks (7 March 2000), at [http://www.wto.org/english/tratop\\_e/devel\\_e/sem01\\_e/sdtrem\\_e.htm](http://www.wto.org/english/tratop_e/devel_e/sem01_e/sdtrem_e.htm). Cf. Joseph E. Stiglitz, 'Two Principles for the Next Round or, How to Bring Developing Countries in from the Cold', 23 *World Economy* (2000) 437, at 437–38 (criticizing the developed countries' 'hypocrisy' when they continuously exhort developing countries towards further market openings, while they still maintain trade barriers in sectors of natural comparative advantage for developing countries).

<sup>23</sup> Rolland, above n 2, at 308.

developing countries under-exploited SDTs, but because developing countries could not use them due to their inherent inoperability.

The aforementioned dilemma is endemic to the exogenous nature of the mainstreaming of development. As long as development is juxtaposed with trade as a non-trade factor, as seen in the slogan of trade *and* development, development value may cancel off trade value in an entropic fashion, or development value itself may not be subject to full operationalization due to the lack of textual clarity. At this juncture, the first dimension of development in the WTO, i.e. the general trade rules and disciplines, which remains beyond the scope of the book, may neutralize the dilemma. Embracing general trade rules and disciplines, such as the national treatment obligation and antidumping/subsidies disciplines, is to regard development not as an exogenous but as ‘endogenous’ value that emerges within free trade. This new approach prioritizes mainstreaming trade over mainstreaming development. As protectionism still remains one of the biggest threats to development, the potential that general trade rules and disciplines could contribute to development is enormous. It is especially so in the new trade reality characterized by global value chains.<sup>24</sup> As the era of ‘mono-location’ production has begun disappearing, so has the traditional mercantilist appeal to reciprocity. In a global value chain, international trade is a cooperative project, rather than a win-or-lose competition. Even a small country can take up a niche and create some value. Note that nearly 60% of all global trade is now in some type of parts and components, not final products. Given the situation, ‘trade facilitation’ augurs well to developing countries. As the WTO Deputy Director-General Valentine Rugwabiza recently observed, ‘[R]educed transit and transaction costs would be especially beneficial to small and medium-size enterprises operating in landlocked countries’, such as in Africa.<sup>25</sup>

Under the general trade rules and disciplines approach, development is endogenized within the WTO jurisprudence without reference to any explicit SDT provision. Examples are legion. *Reformulated Gasoline* (1996),<sup>26</sup> the very first decision under the WTO system, is a case in point. In this case, two developing countries, Venezuela and Brazil, sued a developed country, the USA, challenging the latter’s environmental regulation (the ‘Gasoline Rule’), which imposed a stricter standard on the imported gasoline than the domestic one. Although the Appellate Body agreed with the USA that its measure was indeed a legitimate environmental policy relating to the conservation of exhaustible natural resources under GATT Article XX(g),

<sup>24</sup> See Sungjoon Cho and Claire R. Kelly, ‘Are World Trading Rules Passé?: Trade Anachronism and Its Discontents’, 53 *Virginia Journal of International Law* (forthcoming in 2013).

<sup>25</sup> WTO News, *DDG Rugwabiza calls on ECOSOC to fight protectionism*, 3 July 2012.

<sup>26</sup> *United States - Standards for Reformulated and Conventional Gasoline*, Panel and Appellate Body Report adopted on 20 May 1996, WT/DS2/9.

it eventually struck the rule on the ground that it constituted unjustifiable discrimination and disguised restriction on international trade within the meaning of the chapeau of that Article. The Appellate Body held that:

We have above located two omissions on the part of the United States: to explore adequately means, including in particular cooperation with the governments of Venezuela and Brazil, of mitigating the administrative problems relied on as justification by the United States for rejecting individual baselines for foreign refiners; and to count the costs for foreign refiners that would result from the imposition of statutory baselines... In the light of the foregoing, our conclusion is that the baseline establishment rules in the Gasoline Rule, in their application, constitute “unjustifiable discrimination” and a “disguised restriction on international trade.”<sup>27</sup>

Given that co-complainants in this case were developing countries, the Appellate Body’s potential remedy in this case—a ‘cooperative arrangement’—connotes development-conscious efforts by a developed country respondent. One might reasonably speculate that the USA would provide certain technical assistance to Venezuela and Brazil in the course of such cooperative arrangement. In this regard, the *Reformulated Gasoline* case law can be extrapolated to other disputes concerning regulatory discrimination involving developing countries. This implicit ‘duty to consider’, if applied to a developed importing country, can internalize development concerns within general WTO trade rules and disciplines.

Indeed, the Appellate Body reaffirmed this approach in the subsequent *Shrimp/Turtle* case (1998) involving several developing countries (India, Malaysia, Pakistan, and Thailand) and a developed country, the USA. In this dispute, the USA banned the import of shrimp from these developing countries on the ground that they failed to meet its environmental regulatory guidelines (‘1996 Guidelines’) under Section 609, which *inter alia* required foreign shrimpers to use ‘turtle excluder devices’. As it did in *Reformulated Gasoline*, the Appellate Body highlighted the chapeau under GATT Article XX. It held that:

[I]t is not acceptable, in international trade relations, for one WTO Member to use an economic embargo to require other Members to adopt essentially the same comprehensive regulatory program, to achieve a certain policy goal, as that in force within that Member’s territory, without taking into consideration *different* conditions which may occur in the territories of those other Members.<sup>28</sup>

Thus, the Appellate Body ruled that the USA measure in question, i.e. certain parts of the 1996 Guidelines under Section 609, was unjustifiable

<sup>27</sup> Ibid, at 28.

<sup>28</sup> *United States–Import Prohibition of Certain Shrimp and Shrimp Products*, AB-1998-4, WT/DS58/AB/R, para 164 (emphasis in original).

discrimination under the chapeau of GATT Article XX. Similar to the *Reformulated Gasoline* case law, the *Shrimp/Turtle* case law can also be tapped to check developmentally pernicious regulatory unilateralism often exercised by developed countries such as the USA and the EU. Developed importing countries should consider the unique conditions of developing exporting countries.

This endogenization of development within the ordinary WTO jurisprudence is also conceivable in case a developing country is an importing, regulating country. In *Brazil-Tyres* (2007),<sup>29</sup> Brazil banned the import of retreaded tyres from the EU since these tyres could provide feeding grounds for mosquitoes responsible for various diseases, such as yellow fever, malaria, and dengue. Although Brazil admitted that such ban would provisionally constitute a violation of GATT Article XI:1, it claimed that the ban was necessary to protect human health under GATT Article XX (b), namely, that no other reasonable alternatives existed. In reviewing those alternative measures, the panel took into account a development dimension of the Brazilian ban in this case. The panel viewed that:

The evidence suggests that the most up-to-date technology that can control toxic emissions to minimum levels is *not necessarily readily available, mostly for financial reasons*.<sup>30</sup>

Brazil has demonstrated that the *currently available disposal methods* capable of handling the existing volumes of waste tyres, namely landfilling, stockpiling and tyre incineration, even if performed under controlled conditions, pose risks to human health and cannot constitute an alternative to the import ban.<sup>31</sup>

While this endogenization approach is largely beyond the scope of this book, the author appears to acknowledge its possibility. In her discussion of Antigua's cross-retaliation against the USA in the TRIPS sector, she observes that:

[S]omewhat surprisingly, both the parties and the arbitrators have made development arguments, and factored a party's developing status into their analyses, *despite the lack of SDT language* in Article 22. The willingness to take into account development considerations is all the more unexpected given the timidity that parties and adjudication have shown in invoking SDT provisions where they do exist.<sup>32</sup>

One might sympathize with the author's frustration at the WTO tribunal's failure in invoking SDT provisions. It would be ideal for the WTO tribunal to judicially operationalize those SDT provisions in its decision. Perhaps the

<sup>29</sup> Brazil – Measures Affecting Imports of Retreaded Tyres, WT/DS332/AB/R, Appellate Body Report circulated on 3 December 2007.

<sup>30</sup> Ibid, at para 7.193 (emphasis added).

<sup>31</sup> Ibid, at para 7.195 (emphasis added).

<sup>32</sup> Rolland, above n 2, at 185 (emphasis added).

WTO tribunal may still wait for a perfect dispute in which it can do so. Nonetheless, as the author herself admits, most, if not all, SDT provisions remain vague and inoperable in actual adjudications. For example, most capacity building clauses allow developed country donors to decide ‘how, when, and to which members’ they accord technical assistance.<sup>33</sup> Yet judicially forcing developed country donors to come up with certain ‘remedies’<sup>34</sup> based on such vague provisions would be both impracticable and undesirable. It would be impracticable given the current WTO governance structure, which is not a world government; it would be undesirable in that such judicial activism undermines the very integrity of the decision.

#### IV. EPILOGUE: THE CULTURE OF THE WTO

Let me close this review essay by raising two additional issues that the book does not fully engage but that still warrant special attention in promoting development within the WTO system: ‘administrative barriers’ and the ‘GATS Mode 4 (Free Movement of Natural Persons)’. First, garden-variety administrative barriers, such as rules of origin, complex standards,<sup>35</sup> and antidumping measures,<sup>36</sup> seriously impede market access of developing country exporters. For example, sub-Saharan African apparel products are subject to duty and quota-free access to the US market under the African Growth and Opportunities Act only if they are manufactured in those countries ‘from the U.S. fabric, formed from U.S. yarn cut in the United States’.<sup>37</sup> Some testing requirements imposed by developed countries are prohibitively costly for developing country exporters.<sup>38</sup> More often than not, antidumping measures by developed country governments targeting developing countries’ main exports, such as basic metals, plastic, rubber, chemical products, and textiles, nullify the latter’s comparative advantage. Given the exorbitant costs in responding to antidumping investigations, the mere launch of the investigation is enough to dissuade developing countries from accessing developed countries’ markets.<sup>39</sup> In sum, such administrative protectionism, if left unchecked, tends to cartelize the global market and further

<sup>33</sup> Ibid, at 115.

<sup>34</sup> Ibid, at 122.

<sup>35</sup> See generally John S. Wilson and Victor O. Abiola (eds), *Standards and Global Trade: A Voice for Africa* (2003).

<sup>36</sup> OECD, Analysis of Non-Tariff Barriers of Concern to Developing Countries, OECD Trade Policy Working Paper No. 16, TD/TC/WP(2004)47/FINAL, 3 June 2005 (hereinafter OECD, Analysis).

<sup>37</sup> Luis Jorge Garay S. and Rafael Cornejo, ‘Rules of Origin and Trade References’, in Bernard Hoekman et al., (eds), *Development, Trade, and the WTO: A Handbook* (2002), at 114, 115.

<sup>38</sup> OECD, Analysis, above n 36, at 18.

<sup>39</sup> Elizabeth L. Gunn, ‘Eliminating the Protectionist Free Ride: The Need for Cost Redistribution in Antidumping Cases’, 28 Boston College International and Comparative Law review (2005), at 165, 175.

cripples small players from developing countries to benefit from the global value chains.<sup>40</sup>

Second, WTO members should revisit the unique opportunities provided by free movement of natural persons (Mode 4) of the General Agreement on Trade in Services (GATS). The agenda's characteristic win-win situation between developed and developing countries has widely been documented.<sup>41</sup> The undeniable trend of a global demographic situation is also a powerful justification for embracing this new area of international trade. Although negotiation on the agenda remains largely deadlocked due to its politically combustible nature, scholars have presented a number of practicable policy proposals, such as a 'GATS visa'.<sup>42</sup> For the world trading system to be truly equitable, the WTO members must somehow activate this agenda.

A final note of caution: bringing development into trade should not translate into the WTO's monopoly on this cause. The WTO cannot, and should not, shoulder by itself this daunting charge. The WTO must continue collaborating with development agencies, such as the World Bank and the UNCTAD. NGOs and civil society can also play a critical role in providing not only advocacy but also practical technical assistance. Perhaps most importantly, domestic governance of developing countries remains the essential component of development.<sup>43</sup>

In closing, the normative fulfillment of development in the WTO, which is the leitmotif of the book, will not arrive until the culture of the WTO changes. As eloquently demonstrated in the recent deadlock of the Doha Round talks, the WTO members are still preoccupied by the old mercantilist culture. In turn, the WTO's culture will not change until its members realize that the WTO is not a mere sum of contractual transactions but a *community* where we collectively create and share prosperity. As the author rightly points out, this will be a 'long-term' enterprise.<sup>44</sup>

<sup>40</sup> See Bela Balassa, *The Newly Industrializing Countries in the World Economy* (1981), at 118–19 (discussing 'international cartels' and 'market-sharing' in some industries, including textiles and shoes, resulting from new protectionist moves by developed countries which feared competition from developing countries).

<sup>41</sup> OECD, *Service Providers on the Move: Labor Mobility and the WTO General Agreement on Trade in Services* (2003), at 3; The Guardian, Migrants' Billions Put Aid in the Shade, 31 January 2013.

<sup>42</sup> See, e.g. Sungjoon Cho, 'Development by Moving People: Unearthing the Development Potential of a GATS Visa', in Joel P. Trachtman and Chantal Thomas (eds), *Developing Countries in the WTO Legal System* (2009), at 457.

<sup>43</sup> Gerald M. Meier and James E. Rauch, *Leading Issues in Economic Development* 7th ed. (2000), at 213–40 (highlighting the importance of education and human capital in economic development); Dani Rodrik, U.N. Dev. Programme, *The Global Governance of Trade: as if Development Really Mattered* 10 (October 2001) (emphasizing the critical contribution of 'domestic institutional innovations' to economic development), available at [http://www.undp.org/mainundp/propoor/docs/pov\\_globalgovernancetrade\\_pub.pdf](http://www.undp.org/mainundp/propoor/docs/pov_globalgovernancetrade_pub.pdf).

<sup>44</sup> Rolland, above n 2, at 331.